2000

Dipoma v. McPhie : Brief of Petitioner

Utah Supreme Court

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IN THE UTAH SUPREME COURT

MARY ANN LUCERO DIPOMA, Plaintiff, Appellant and Respondent, vs. BRIAN McPHIE and DOES 1 THROUGH 20 WHOSE TRUE NAMES ARE UNKNOWN, Defendant, Appellee and Petitioner	)	No. 20000466SC Priority No. 12

BRIEF OF PETITIONER

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PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of this case contains all of the parties to the proceedings in the court below.

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JURISDICTION

The Utah Supreme Court has jurisdiction over this matter pursuant to sections 78-2-2(3)(a) and 78-2-2(5) of the Utah Code.

STATEMENT OF THE ISSUES

1. Does Utah law require that, where a civil litigant's ability to pay is not at issue, a filing fee be paid to the court clerk before a complaint is considered "filed"?

2. Is it unreasonable as a matter of law for a civil litigant who has paid a filing fee with a bad check to fail to pay the filing fee for over eight months and after the statute of limitations has run where the litigant's ability to pay is not at issue?

STANDARD OF REVIEW

The Utah Supreme Court has granted Petitioner McPhie's Petition for Certiorari. Under its certiorari jurisdiction, this Court reviews the decision of the court of appeals in this case for correctness, affording no special deference to the court's legal conclusions. See Longley v. Leucadia Financial Corp., 2000 WL 1206555, 402 Utah Adv. Rep. 29 (Utah 2000).

DETERMINATIVE CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Rule 3 of the Utah Rules of Civil Procedure governs when an action is properly commenced. Sections 78-12-1 and 78-12-25 of the Utah Code Annotated govern the statute of limitations at issue in this case. Sections 21-1-1, 21-1-5 and 21-7-2 of the Utah Code Annotated pertain to the necessity of payment of filing fees in bringing a civil action. The text of these rules and statutes are set forth in the addendum.

STATEMENT OF THE CASE

This case arises from a traffic accident that occurred on November 29, 1993, where Defendant Brian McPhie ("McPhie") allegedly collided with Plaintiff Mary Ann Lucero Dipoma's ("Dipoma") Porsche. (R. 1-3). On November 24, 1997, five days prior to the running of the four-year statute of limitations, Dipoma delivered a *pro se* complaint to the Third Judicial District Court accompanied by an insufficient funds check for payment of the filing fee. (R. 16-17, 21).

Dipoma's personal check was returned to the Clerk of the Court on December 29, 1997. (R. 16-17, 21). The Clerk of the Court notified Dipoma of the insufficient funds check shortly thereafter, and told Dipoma that the Clerk could not accept additional checks from her as her first check had been returned. (R. 16-17, 21). After waiting over two more months, Dipoma attempted to pay the filing fee on March 10, 1998 by mailing

another check to the Clerk of the Court. (R. 21, 29-30). However, the Court Clerk would not accept a second check from Dipoma where her first check had been returned for insufficient funds. (R. 21, 29-30). No other action was taken by Dipoma until five months later when, on August 11, 1998, she paid the mandatory filing fee of $120.00. (R. 21, 29-30, 42). However, Dipoma's payment came nine months after the applicable statute of limitations. (R. 21). Dipoma had previously retained an attorney and the summons and complaint was served on McPhie on August 26, 1998, a full nine months after Dipoma first delivered the complaint to the Clerk of the Court. (R. 4-8).

On February 18, 1999, McPhie filed a Motion for Summary Judgment arguing that the four-year statute of limitations barred Dipoma's cause of action in that she failed to pay the mandatory filing fee until nine months after the applicable statute of limitations. (R. 14-15). Accordingly, Dipoma's cause of action was not timely commenced for purposes of the statute of limitations. (R. 14-15). The facts pertinent to the motion were undisputed. (R. 17-18, 29-31, 64, 83-84).

Upon the conclusion of the briefing, the trial court granted McPhie's Motion for Summary Judgment and issued its order. (R. 74, 83-85). Based upon the briefing and undisputed facts, the trial court concluded that Dipoma's cause of action was barred by the four-year statute of limitations. (R. 74, 83-85). The trial court found that Dipoma

failed to pay the filing fee until nine months after first submitting the complaint to the Clerk of the Court and therefore the cause of action was not commenced for statute of limitations purposes until she paid the mandatory filing fee. The trial court also concluded that the undisputed facts showed that Dipoma's ability to pay the mandatory filing fee was never an issue in the case. (R. 83-85).

Dipoma filed a Notice of Appeal from the trial court's final order and the appeal was assigned to the Utah Court of Appeals. The Court of Appeals reversed the trial court's grant of summary judgment, holding that filing fees did not have to be paid in order for a complaint to be considered "filed,"and that it was not unreasonable for Dipoma to wait over eight months to properly pay the filing fee. McPhie then filed a Petition for Certiorari to the Utah Supreme Court that was granted.

SUMMARY OF THE ARGUMENTS

The trial court correctly granted McPhie's Motion for Summary Judgment. The facts pertinent to the motion were undisputed. The Utah Legislature has clearly indicated that where a litigant's ability to pay a filing fee is not at issue, that litigant must pay the initial filing fee in advance or at the time the Clerk of the Court accepts the pleading. This did not occur. Because the Utah Legislature has determined that advance payment of a filing fee is *required* before a complaint is considered "filed," Dipoma's

cause of action was not "commenced" for purposes of Rule 3 of the Utah Rules of Civil Procedure until she made good on her payment. Dipoma waited over eight months after she first submitted her complaint to the clerk's office to pay the mandatory filing fee. Payment was not made until after the applicable statute of limitations had run on her cause of action against McPhie. Dipoma's complaint was properly dismissed on the statute of limitations defense.

Alternatively, assuming that Dipoma "constructively filed" her complaint when she submitted such to the Clerk of the Court, as a matter of law she failed to pay the mandatory filing fee within a reasonable time. After receiving actual notice of the need to make payment for the mandatory filing fee, Dipoma waited some eight months to pay the same. Dipoma should not be allowed an extra nine month extension on the applicable statute of limitations in which to finally get around to commencing her action by paying the filing fee and serving the complaint on McPhie. The statute of limitations was not designed to allow a plaintiff to wait months or years in which to pay the filing fee after a plaintiff submits the complaint to the Clerk of the Court.

The Utah Court of Appeals decision has placed Utah law with respect to "filing" of complaints in a state of confusion. Civil litigants, be they *pro-se* or represented, are now faced with a rule and statutory scheme that appear facially opposite

to a Utah Court of Appeals decision. On the one hand, a civil litigant is instructed that in order to "file" a complaint he or she must pay a filing fee at the time the complaint is filed. On the other hand, the same litigant is instructed that such fees are not necessary to commence a lawsuit and may be paid, not only after the complaint has been given to the court, but even after the statute of limitations. In fact, under the Appellate Court's decision, a civil litigant may forestall paying the "directive" filing fee until specifically ordered to do so by the trial court. Under the decision below, such a litigant may wait nine months or more to pay the required fees. As such, the Court of Appeals has given plaintiffs a judicial extension to sections 21-1-1, 21-1-5 and 21-7-2 by allowing them to pay the required filing fees months after the complaint is delivered to the trial court.

The Court of Appeals' decision will require trial courts to act as a collection agency as they are forced to administrate the late payment of filing fees by those litigants who fail or refuse to pay the required fees at the time they deliver their complaints. The Court of Appeals decision has opened the door for litigants to pay filing fees months after they deliver their complaint to the trial court, but has provided trial courts with absolutely no direction as to when courts must order such fees to be paid. In addition, the Court of Appeals' decision has given a great deal of discretion to court clerks, that is not contemplated by relevant statutes, by allowing court clerks to accept or reject at will

complaints that are delivered without filing fees. Again, the court clerks are given no standard or directions by the Utah Court of Appeals' decision as to when such filing fees must be paid. Such results were clearly never intended by the Utah Legislature when it enacted sections 21-1-1, 21-1-5 and 21-7-2, and should not be sanctioned by this Court.

It is clear that the implications of the Court of Appeals decision below are far reaching as the court specifically found that sections 21-1-1, 21-1-5 and 21-7-2 are "merely directive." These statutes which govern over thirty different types of fees payable in the civil courts, as well as fees payable in other branches of government, have been rendered virtually meaningless by the Court of Appeals as a party availing themself of government services may now pay at their own discretion. For these reasons, this Court should hold that the trial court correctly found that Dipoma's claims were barred by the statute of limitations and that her payment of the mandatory filing fee eight months after the statute of limitations was unreasonable as a matter of law.

ARGUMENT

I. UNDER UTAH LAW A COMPLAINT IS NOT "FILED" UNTIL THE PROPER FILING FEE HAS BEEN PAID.

Under Utah law, it is clear that a civil litigant must pay the proper filing fee before a complaint is considered "filed." Rule 3 of the Utah Rules of Civil Procedure requires that a complaint be "filed" in order to commence a civil action. Rule 3 provides

in pertinent part:

> (a) How commenced. A civil action is commenced (1) by **filing** a complaint with the court . . ..
> (b) Time of jurisdiction. The court shall have jurisdiction from the time of **filing** of the complaint . . ..

Utah R. Civ. P. 3(a) (emphasis added). As such, Rule 3 is silent as to whether a filing fee is required before a complaint can be considered "filed". However, the Utah Legislature has expressly outlined the requisites for "filing." Where the ability of a litigant to pay a filing fee is not at issue, the Utah Legislature has mandated that filing fees must be collected *in advance*. Section 21-1-1 of the Utah Code Annotated, which expressly applies to court clerks, reads:

> Collection in advance by state officers.
> For Services performed in their respective offices, the officers named in this chapter **shall collect in advance** for the use and benefit of the state the fees hereinafter enumerated and such other fees as may be provided by law.

Utah Code Ann. § 21-1-1 (1999) (emphasis added). Section 21-7-2 of the Utah Code Annotated is even more to the point. That section, which also expressly applies to court clerks, provides:

> Payment of fees prerequisite to service — Exception.
> (1)(a) The state and county officers mentioned in this title may not perform any official service **unless the fees prescribed for that service are paid in advance**.

Utah Code Ann. 21-7-2 (1999) (emphasis added). Finally, section 21-1-5 indicates that the filing fee for any civil complaint invoking the jurisdiction of the court of record is $120.00. Subsection (cc) to this statute expressly mandates that "all fees **shall be paid at the time the clerk accepts the pleading for filing or performs the requested service.**" Utah Code Ann. § 21-1-5 (cc) (1999) (emphasis added).

As such, while Rule 3(a) itself is silent as to whether a filing fee must be paid before a complaint is considered filed, it is clear that when consistently read with the above listed statutes, Utah law requires a filing fee to be paid before a complaint is considered "filed." The Utah Legislature has used three separate statutes to express its clear intent that a "filing" of a complaint in civil court requires the payment of a filing fee. Based upon this legislative mandate, where the litigant's ability to pay is not at issue, a complaint is not "filed" for purposes of Rule 3(a) of the Utah Rules of Civil Procedure until the mandatory filing fees have been paid.

This exact issue was determined by the Colorado Court of Appeals in a jurisdiction that has an identical rule of civil procedure and statutory scheme.[1] See

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[1] Unlike the cases relied upon by the Utah Court of Appeals, Colorado follows the identical Rules of Civil Procedure pertaining to commencement of an action and the Colorado Legislature has similarly declared that a litigant must pay filing fees at the time of first appearance which is when the complaint is filed. See C.R.S. § 13-32-101(1)(d) (1997). Each of the cases relied upon by the Court of Appeals in the decision below involved jurisdictions that had adopted Rules of Civil Procedure that expressly did not

Broker House International v. Bendelow, 952 P.2d 860 (Colo. Ct. App. 1998). In Broker House, the plaintiff filed a legal malpractice action and submitted a complaint to the clerk of the court with a check for both the docket fee and the jury demand fee on February 27, 1996. However, the check for the fees was returned to the clerk of the court for insufficient funds. After the plaintiff was notified by the clerk of the court that the check had been returned for insufficient funds, the plaintiff paid the fees in cash on April 15, 1996. The statute of limitations on a legal malpractice action, however, expired on March 1, 1996, approximately 45 days prior to the plaintiff's payment of the filing fees. The trial court dismissed the plaintiff's complaint and an appeal ensued. See Broker House, 952 P.2d at 862.

On appeal, the plaintiff argued that the action was commenced within the applicable limitations period because it was "filed" when the complaint was accepted by the court, not when the check for filing fees was made good by cash payment. The Colorado Court of Appeals disagreed. The court, citing to Rule 3(a) of the Colorado Rules of Civil Procedure, reasoned that a civil action is commenced by filing a complaint with the court. The court then recognized that the Colorado legislature had enacted a statute wherein the clerk of the court must collect docket fees at the time of first

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require filing fees, or jurisdictions that lacked the statutory framework that exists in Utah. See Dipoma, 1 P.3d at 567; (R. 104-05).

appearance, which is when the complaint is filed. See id. at 862.

The court reviewed the case law from other jurisdictions which have held that the filing of an action without proper payment of fees does not toll the running of the statute of limitations. See id. Upon consideration of those authorities, the court held:

> If a complaint submitted to the court clerk is accompanied by an insufficient funds check, then it is not "filed" with the court for purposes of the statute of limitations. Thus we agree with the trial court in this case that **plaintiff's complaint was not filed for purposes of the statute of limitations until the filing fee was paid** on April 15, 1996.

Id. at 863.

Similarly, in De-Gas, Inc. v. Midland Resources, 470 So. 2d 1218 (Ala. 1985), the plaintiff delivered a complaint and summons to the clerk of the court on June 14, 1983. However, the plaintiff did not pay the filing fee until August 5, 1983 which was after the applicable statute of limitations had run on the plaintiff's cause of action. The plaintiff's ability to pay the filing fee was not at issue. Alabama follows the same Rules of Civil Procedure as Utah wherein "a civil action is commenced by filing a complaint with the court." A. R. Civ. P. 3(a) (1998). Like Utah, the Alabama legislature has declared that a civil litigant must pay filing fees in advance. Section 12-19-70 of the Alabama code indicates that "[t]here shall be a consolidated civil filing fee, known as a docket fee, collected from a plaintiff at the time a complaint is filed in circuit court or in

district court. The docket fee may be waived initially and taxed as costs at the conclusion of the case if the court finds that payment of a fee will constitute substantial hardship." De-Gas, 470 So. 2d at 1220.

The court reasoned that the term "shall" in the statutory provision "makes the payment of a filing fee mandatory." Id. The court stated that "[i]t is the obvious intent of the legislature to require that either the payment of this fee or a court-approved verified statement of substantial hardship accompany the complaint at the time of filing." Id. The court affirmed the trial court's dismissal of the plaintiff's complaint on the ground that the cause of action was not commenced within the applicable statute of limitations. See id. at 1221.

Furthermore, in Boostrom v. Bach, 622 N.E.2d 175 (Ind. 1993), the plaintiff attempted to commence an action in small claims court by submitting a complaint to the clerk of the court on January 12, 1990. However, the plaintiff did not pay the filing fee until February 5, 1990, which was after the statute of limitations had run on her cause of action. Under Indiana Rules of Civil Procedure, "a civil action is commenced by filing a complaint with the court . . .." Id. at 175. Likewise, Indiana statute mandates that "the clerk shall collect from the party filing the action a small claims costs fee of thirty dollars." Id. at 176 (citations omitted). In affirming the dismissal of the plaintiff's

complaint, the Indiana Supreme Court reasoned that tendering the prescribed filing fee is relevant to the objective of "insuring that parties are given formal and seasonable notice that a claim is being asserted against them." Id. at 176. Accordingly, the court held that a complaint is not "filed" for statute of limitations purposes unless the filing fee has been paid in accordance with statutory rules. See id. at 176-77.

Finally, in Wanamaker v. Columbian Rope Co., 713 F.Supp. 533 (N.D. N.Y. 1989), aff'd, 108 F.3d 462 (2nd Cir. 1997), the court ruled similarly. There, the plaintiff attempted to commence an action on October 28, 1988 by delivering a complaint to the clerk of the court. The plaintiff did not pay the filing fee until November 1, 1988, which was after the applicable statute of limitations. The ability of the plaintiff to pay the filing fee was not at issue. He did not file an affidavit of impecuniosity. Section 1914 of the U.S.C. provides that "[t]he clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court . . . to pay a filing fee of $120.00." 28 U.S.C. § 1914(a) (West Supp. 1989). Also, local rule 5 of the district court stated that "[t]he clerk shall not be required to render any service for which a fee is prescribed by statute . . . unless the fee for the particular service is paid to him in advance." Wanamaker, 713 F.Supp. at 537 n. 2.

The court held that the plaintiff's complaint was filed for statute of limitations

purposes on November 1, 1988, when the filing fee was paid to the clerk of the court. In so holding, the court reasoned:

> Authorizing the commencement of the district court action without the required filing fee would breed countless administrative and procedural woes, and give to the Clerk's Office an element of discretion where none was intended. The Clerk's office would be converted into a part-time credit institution, spending significant energy collecting fees as well as extending credit.

Id. at 538 (citations omitted).

As discussed more fully below, Dipoma's case is an excellent example of how, under the Court of Appeals' decision, the court clerk and the trial court would be overly burdened with "administrative and procedural woes." The record shows that Dipoma's failure to properly pay the filing fee at the time the complaint was delivered required the court clerks to track, correspond and account for Dipoma's filing fee. (R. 21). Over the course of several months, the court clerks were required to make numerous docket entries detailing their efforts to collect the proper filing fee from Dipoma. (R. 21). The Court of Appeals' decision would impose this burden on every civil court in Utah. It is not hard to imagine the large number of cases court clerks would have to track and account for as word of the Dipoma decision grew.

Although it opened the door to such administrative burdens, the Court of Appeal's decision has left trial courts and court clerks entirely without any direction as to

when filing fees must be paid. The Court of Appeals' decision only directs that a civil litigant does not have to pay the filing fee at the time of delivery of the complaint, and that payment of a filing fee nine months after delivery of the complaint is acceptable, but gives no time limit, standard or direction that aids a trial court in dealing with a litigant who has failed to pay a filing fee.

As such, the Utah Court of Appeals' decision has opened a veritable Pandora's Box with respect to determining when filing fees must be paid. However, there is no need for Utah's trial courts to be put in such a position. By enacting sections 21-1-1, 21-1-5 and 21-7-5, the Utah legislature has already expressly addressed this issue. The Utah Legislature has affirmatively indicated that where no issue exists as to a litigant's ability to pay the filing fee, the payment of a filing fee must paid before a complaint is considered "filed." Accordingly, Dipoma's cause of action was not "commenced" pursuant to Rule 3 of the Utah Rules of Civil Procedure because her complaint was not properly "filed" until she made good on the payment for $120.00. For this reason, based on the statutes discussed above, this Court should affirm the decision of the trial court.

II. UNDER ACCEPTED RULES OF STATUTORY INTERPRETATION, THE TRIAL COURT PROPERLY FOUND THAT UTAH LAW REQUIRES A FILING FEE TO BE PAID BEFORE A COMPLAINT IS PROPERLY "FILED".

The Court of Appeals' decision below necessarily involved the interpretation of Rule 3 and of sections 21-1-1, 21-1-5 and 21-7-2 of the Utah code. This Court has recently stated that the purpose of statutory interpretation "is to give effect to the legislature's intent in light of the purpose the statute was meant to achieve." Lieber v. ITT Hartford Ins. Center, Inc., 2000 WL 1218479, 2000 UT 72 (Utah 2000) (quoting Evans v. State, 963 P.2d 177, 184 (Utah 1998)). To achieve this goal, "[t]he best evidence of the true intent and purpose of the legislature in enacting a statute is the plain language of the statute." Id. (citing State v. Hunt, 906 P.2d 311, 312 (Utah 1995). In looking to the plain language of a statute, the Court assumes that "the Legislature used each term advisedly," and gives "effect to each term according to its ordinary and accepted meaning." Versluis v. Guaranty Nat'l. Cos., 842 P.2d 865, 867 (Utah 1992). Furthermore, "where the statutory language is plain and unambiguous, [the Court does] not look beyond the language's plain meaning to divine legislative intent." Lyon v. Burton, 5 P.3d 616, 622 (Utah 2000) (citing Horton v. Royal Order of the Sun, 821 P.2d 1167, 1168 (Utah 1991)). Just as importantly, the plain language of a statute "is to be

read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and with other statutes under the same and related chapters." Lyon, 5 P.3d at 622; see Roberts v. Erickson, 851 P.2d 643, 644 (Utah 1993) (per curiam).

At the outset of its decision, the Court of Appeals noted that rules and statutes should be strictly construed according to their plain language. See Dipoma, 1 P.3d at 567-68; (R. 105). Much of the Court of Appeals decision was based on the analogy of the instant case to rules and cases involving whether appellate docketing fees are jurisdictional on appeal. See Dipoma, 1 P.3d at 567-68 (R. 105). The Court of Appeals specifically analyzed former Rule 73 of the Utah Rules of Appellate Procedure, as well as Rules 3 and 14(b) of the current Rules of Appellate Procedure and noted that each of these rules expressly discussed whether a docketing fee must be paid before an appellate court takes jurisdiction over an appeal.[2] Based on the fact that these Rules expressly discussed filing fees, the Court of Appeals concluded that because Rule 3 of the Utah Rules of Civil Procedure contains no specific reference to filing fees, and no specific incorporation of sections 21-1-1, 21-1-5 or 21-7-2, the filing fee need not be paid before a

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[2] Former Rule 73 specifically states that payment of a docketing fee is jurisdictional. See former Utah R. App. P. 73; Dipoma, 1 P.3d at 568; (R. 106). Rule 3 expressly provides that failure to pay the docketing fee is not jurisdictional. See Utah R. App. P. 3; Dipoma, 1 P.3d at 568; (R. 106-07). Similarly, Rule 14(b) expressly provides that the court clerk may not accept a petition unless the docketing fee has been paid. See Utah R. App. P. 14(b); Dipoma, 1 P.3d at 569; (R. 107-08).

trial court takes jurisdiction over a case. See Dipoma, 1 P.3d at 569; (R. 107-08).

As a matter of Utah law and as a matter of logic, this conclusion is erroneous. The recognition that Rule 3 is silent as to whether a civil litigant must pay a filing fee before a complaint is considered "filed" does not necessitate the conclusion that the statutory scheme created by the Utah Legislature does not apply to Rule 3. While the Court of Appeals strictly interpreted Rule 3 according to its plain language, the court appears to have stopped its analysis short of applying the same rules of interpretation to sections 21-1-1, 21-1-5 and 21-7-2. Instead, despite their plain language, the Court of Appeals held that these sections "are merely directive to court clerks." See Dipoma, 1 P.3d at 567; (R. 104-05). This conclusion is directly contradictory to the principle enunciated in the opening statement of the Court of Appeals decision that rules and statutes are construed according to their plain language and violates the principle that the Rules of Civil Procedure are to be read consistently with statutes and Utah law. See Dipoma, 1 P.3d at 567 (citing Hausknect, 882 P.2d at 685); (R. 104-05). Nothing in sections 21-1-1, 21-1-5 and 21-7-2 indicates that the Utah Legislature intended these statutes to be "merely directive." Such a construction of this series of statutes disables the express provisions of the Utah Legislature in a way that reduced these sections to nothing more than mere suggestions.

The Court of Appeals' construction of sections 21-1-1, 21-1-5 and 21-7-2 robs these statutes of all practical meaning. Under the Court of Appeals' decision, a court clerk would be "directed" to require a civil litigant to pay a filing fee before accepting a complaint from them. However, armed with the new Dipoma decision, the litigant could demand that the court clerk accept the complaint and that the trial court take jurisdiction over the case as the filing fees were not required under Rule 3. Under the Court of Appeals' decision, the court clerk would be required to ignore Utah law requiring a filing fee and would have to accept the complaint. As such, under the Court of Appeals' analysis, sections 21-1-1, 21-1-5 and 21-7-2 would cease to have any meaningful application to civil litigation.

The construction of a statute such that it ceases to have any meaningful or practical application to the subject matter it was intended to govern is not in keeping with Utah law. See Lyon v. Burton, 5 P.3d 616, 623 (Utah 2000). Furthermore, statutes should be interpreted and applied in a manner that "reconcil[es] them with the rest of the body of law and procedure as it has existed in this state before and since their adoption." Young, 433 P.2d at 847; see also Silver v. Auditing Div., 820 P.2d 912, 914 (Utah 1991). As the Court of Appeals interpretation of the above referenced sections failed to properly consider the plain meaning of the statutes, failed to apply the statutes to Rule 3 and

disabled the practical meaning and effect of the statues, this Court should affirm the trial court's findings.

III. THE EFFECT OF THE COURT OF APPEALS' OPINION IMPOSES UNREASONABLE BURDENS ON GOVERNMENT AND GIVES THE COURT CLERK DISCRETION WHERE NONE WAS INTENDED.

Notwithstanding the plain language of 21-1-1, 21-1-5, and 21-7-2, the Court of Appeals held that the payment of a filing fee in advance is not mandatory. Instead, according to the Appellate Court, these sections are "merely directive to court clerks." Dipoma, 1 P.3d at 569; (R. 108). The court went on to state that an action is properly commenced within the statute of limitations so long as the document is accepted by the court clerk and stamped "filed." See id. Both Dipoma and the Court of Appeals couched the issue in a jurisdictional sense.[3] However, it is really more an issue of what constitutes the filing of a complaint.

If the Utah statutes regarding the pre-payment of fees is "directive" rather than "mandatory" then the opinion of the Court of Appeals gives court clerks an element of

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[3] The Court of Appeals in paragraph 9 cites to the opinion of Burnett v. Perry Mfg, Inc., 151 F.R.D. 398 (D. Kan. 1993) for the proposition that the majority of courts hold that the payment of filing fees is not jurisdictional. It is important to note that in Burnett the District Court of Kansas had no rule requiring payment of fees in advance. Likewise, all cases cited in Burnett are cases where there were no statutes or local rules requiring payment of filing fees in advance. This is not so in Utah.

discretion where none was intended by the legislature. Pursuant to the decision by the Court of Appeals, so long as a court clerk accepts a pleading and stamps "filed" on the document, it does not matter when the fees are paid. Indeed, under the Court of Appeals' analysis of the issue, there is nothing prohibiting a would-be plaintiff from showing up at the court house with the Dipoma opinion in one hand and an "IOU" in the other. If the court clerk accepted the document, the cause of action would be commenced. There is no need for the would-be plaintiff to worry about the filing of an affidavit of impecuniosity so long as the would-be plaintiff has a friend in the court clerk.

Similarly, under the Utah Court of Appeals' decision, civil litigants will likely be confronted with inconsistent requirements by different Utah courts and even by different clerks in the same court. Under the Court of Appeals' decision it is conceivable that a court clerk in one line could allow litigants to "file" complaints without paying the "directive" filing fee, while the clerk court in another line would require litigants uninformed of the Dipoma decision to pay filing fees before accepting complaints.

The effect of the Court of Appeals' opinion in this case is obvious. It places the burden on the trial court to monitor the payment of fees and issue orders regarding payment of such.[4] For example, a plaintiff may decide to completely bypass the

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[4] This same concern was specifically cited in Wanamaker v. Columbian Rope Co., 108 F.3d 462 (2nd Cir. 1997), and formed part of the basis of the court's decision that

impecuniosity statutes and the requirement of submitting an affidavit of indigency which the trial court must independently review. See Utah Code Ann. 21-7-3 *et seq.* Such a plaintiff could intentionally pass a bad check to the court clerk and have the complaint stamped "filed" prior to the running of the limitations period. Even if the trial court decided to act on its new found role of the debt collector and issue an order, the plaintiff has been able to either bypass payment in advance or having to file an affidavit of impecuniosity. The plaintiff could continue to maintain the cause of action because the court clerk stamped the magic word "filed" on the complaint. This is not the type of result this Court should sanction. At some point in time a plaintiff must be required to "act with dispatch" and adhere to the Utah legislature's mandate regarding the payment of fees in advance.

Perhaps of most concern, while allowing would-be plaintiffs to file complaints at the discretion of court clerks, the Court of Appeals' decision provides absolutely no guidance to trial courts as to how to deal with those litigants that have failed or refused to pay filing fees. Under the Court of Appeals' decision, trial courts apparently must take jurisdiction over a case, even where the filing fee has not been paid. However, trial courts are given no guidance as to when the trial court must intervene and order the

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a filing fee must be paid before a complaint is considered "filed."

litigant to pay the proper fees. In the face of statutes that expressly comment on this issue, it is clear that this state of disarray is completely unnecessary. The Utah Legislature has already affirmatively provided simple direction to trial courts and court clerks that avoids the confusion and inconsistency of the judicial extension granted by the Court of Appeals' decision. The clear direction of the Utah Legislature is that civil litigants must pay the requisite filing fee before the complaint is considered "filed." See U.C.A. §§ 21-1-1, 21-1-5 and 21-7-2 (1999). As these statutes preserve consistency and timeliness in the judicial process, these statutes should not be interpreted and applied in a way that renders them meaningless.

In addition, the Court of Appeals' decision below will require state and local government agencies to act as debt collectors to those who do not pay for government services in advance. Such government agencies that simply collected requisite fees at or before the time of service, will now be required to keep accounting records, handle bank fees, and pursue the collection of the debts owed by those who did not pay prior to receiving government services.

Such a situation is not far-fetched as this very thing happened in Dipoma's case. On December 29, 1997, when Dipoma's check was returned to the court clerk's office for insufficient funds, the court was required to create a fee account to trace the

unpaid filing fee as well as the $20 returned check fee. (R. 21). Numerous entries can be seen on the docket showing how the court clerks were required to track, account for, review and correspond with Dipoma regarding the amounts she owed to the court. (R. 21). It is no stretch to imagine the excessive burden that would be placed on the already overworked court systems in Utah as more and more civil litigants learned that the courts would "loan" them the money for a filing fee for which they would be later billed. Utah's trial courts should not be saddled with the burden of having to act as collection agencies to those who fail or refuse to pay filing fees.

Furthermore, the effect of the Court of Appeals' opinion is not limited to the issue of bad checks and the commencement of a cause of action. Rather, the opinion opens the door for numerous parties who avail themselves of government services to claim that fees and payments can be paid at any time. When the Utah Court of Appeals' decision held that sections 21-1-1, 21-1-5 and 21-7-2 were merely "directive," the court necessarily impacted a number of State offices and departments expressly contemplated by these sections. These offices include: the Lieutenant Governor's Office; the Division of Corporations; the State Auditor's Office; and the civil courts. See U.C.A. § 21-1-1 -5 (1999). Furthermore, the Court of Appeals' decision impacts not just the filing of a complaint in civil court, but all filings of all fees in all civil courts. Just to name a few,

these fees would include: divorce petition fees; small claims filing fees; appellate fees; probate filing fees; child custody filing fees; and arbitration fees. See U.C.A. § 21-1-5 (1999) (listing over thirty categories of fees governed by this section). It is not hard to imagine that, in time, court clerks would spend more time tracking, accounting for and collecting filing fees than they would performing their other court duties.

Dipoma's characterization of this issue as a "molehill" in her Brief in Opposition to Petition for Writ of Certiorari seems dismissive of the implications of the Court of Appeals' decision. It is clear that the Court of Appeals' decision goes beyond whether judicial jurisdiction attaches to the filing of a complaint when a check used for the filing fee is subsequently returned as insufficient. The Court of Appeals' decision specifically limited the scope of sections 21-1-1, 21-1-5, and 21-7-2 by holding that these statutes are "merely directive to court clerks." Dipoma, 1 P.3d at 569; (R. 108). To pretend that such a holding will have no affect beyond the scope of the specific facts of this case overlooks our history and method of litigation.

Given the realistic implications of the Court of Appeals decision, this Court should hold that the trial court properly found that a would-be civil litigant must pay the appropriate filing fee before the complaint is considered "filed".

IV. DIPOMA'S EVENTUAL PAYMENT OF THE MANDATORY FILING FEE NINE MONTHS AFTER IT WAS DUE IS UNREASONABLE AS A MATTER OF LAW.

In addition the Court of Appeals' misinterpretation of the above referenced statutes, it is clear that Dipoma's failure to pay the mandatory filing fee until August 11, 1998, was unreasonable as a matter of law. It is undisputed that Dipoma demonstrated her knowledge that a filing fee was required at the time she submitted the complaint to the Clerk of the Court because she gave the clerk a check. As laid out above, Dipoma filed her first complaint on November 24, 1997. (R. 21). At this same time she gave the clerk an insufficient funds check in order to pay the mandatory filing fee. (R. 21). The insufficient funds check was returned to Dipoma on December 29, 1997. (R. 21). On March 10, 1998, Dipoma mailed a second check to the court that was returned to Dipoma for failure to provide payment in the proper form. (R. 21). On June 1, 1998, apparently considering Dipoma's case abandoned, the court clerk's office ended its tracking of Dipoma's account. (R. 21). On August 11, 1998, more than eight months after Dipoma was notified of her insufficient funds check, and exactly five months after her last contact with the trial court, Dipoma finally paid the court clerk the proper amount and form of payment. (R. 21). However, the payment of the required filing fee occurred after the statute of limitations had run on Dipoma's cause of action. (R. 21).

Neither of the parties nor the Court of Appeals has yet found a single case where a court has held that five months is still a reasonable time within which to pay a filing fee. Every court that has considered this specific issue has found that such an amount of time is per se unreasonable as a matter of law. In dissent, Judge Bench recognized such. See Dipoma, 1 P.3d at 570; (R. 110-11). Citing to several federal cases, Judge Bench concluded that "waiting more than five months to pay the filing fee after being informed that a check has bounced is unreasonable as a matter of law." Id.

The Utah Criminal Code provides guidance as to time periods that would be more reasonable. The Utah Criminal Code requires that a person who innocently or intentionally issues an insufficient funds check is guilty of the misdemeanor of issuing a bad check if they do not pay the proper funds within fourteen (14) days. The Code provides:

> Any person who issues or passes a check or draft for the payment of money . . . which check or draft is legally refused by the drawee, is guilty of issuing a bad check or draft if he fails to make good and actual payment to the payee in the amount of the refused check or draft **within 14 days** of his receiving actual notice of the check or draft's nonpayment.

U.C.A. § 76-6-505(2) (1999) (emphasis added). As such, under the undisputed facts of this case, Dipoma violated the Utah Criminal Code when she failed to pay the amount of the refused check until eight months after she received actual notice of the refused check.

Given this clear statute, it is difficult to see how Dipoma could argue that her failure to pay the proper funds to the court clerk until eight months after receiving notice of her insufficient funds check could possibly be reasonable.

Courts that have considered this issue have invariably found that such amounts of time are unreasonable as a matter of law. For example, in Jarrett v. U.S. Sprint Comm. Co., 22 F.3d 256 (10th Cir. 1994), the plaintiff filed a complaint under Title VII with a form request to proceed in forma pauperis ("IFP") prior to the running of the statute of limitations. These documents were submitted to the district court six days prior to the running of the statute of limitations. Shortly thereafter the district court denied the plaintiff's request for pauper status. The plaintiff waited over five months and eventually paid the filing fee. The district court dismissed the plaintiff's complaint on the basis that it was time-barred by the statute of limitations.

The Tenth Circuit affirmed the district court's determination and held that the plaintiff's action was barred by the statute of limitations because *as a matter of law* the plaintiff failed to pay the mandatory filing fee within a reasonable time. In so holding, the court reasoned that the legal fiction of constructive filing only applied until the district court ruled upon the IFP motion. See id. at 258 Finally, the court recognized that:

> a plaintiff should not be allowed to wait many months or years between submission of the complaint and compliance with the filing

fee requirement.

* * *

> [The plaintiff] was notified that her IFP petition had been denied, but made no effort to pay the required filing fee for over five months . . .. By filing an IFP petition, plaintiff demonstrated her knowledge that a filing fee is ordinarily required, absent the granting of pauper status. Once the IFP petition was denied, the burden was on the plaintiff to pay the filing fee.

Id. at 259-60. Other courts have ruled similarly. See, e.g., Breckin v. MBNA America, 28 F.Supp. 2d 209 (D. Del. 1998) (payment of filing fee 103 days after receiving actual notification of denial of IFP status unreasonable as a matter of law; dismissal of plaintiff's complaint on statute of limitations defense).

In Williams-Guice v. Board of Ed., 45 F.3d 161 (7th Cir. 1994) the court ruled similarly. There the plaintiff's IFP petition was denied after she submitted the same with her complaint within the limitations period. She paid the filing fee 103 days after the denial and after the statute of limitations had run on her cause of action. The Seventh Circuit held that as a matter of law, 103 days was not a reasonable amount of time in which to pay the filing fee after receiving notification of the IFP petition denial. See id. at 165 ("if the motion is denied, the would-be plaintiff must act with dispatch").

Finally, in Truitt v. County of Wayne, 148 F.3d 644 (6th Cir. 1998), the plaintiff paid the filing fee 120 days after the court denied her IFP petition. She paid the same after the applicable statute of limitations had run on her cause of action. She had originally submitted the complaint and IFP petition within the limitations period. The

court held that, as a matter of law, four months was not a reasonable amount of time in which to pay the filing fee after receiving actual notification of the IFP petition denial. Accordingly, the court affirmed the dismissal of the district court on the basis that the statute of limitations had run on the plaintiff's cause of action. See id. at 648.

In this case, Dipoma initially waited ten weeks before attempting to pay the filing fee after receiving notification from the Clerk of the Court that her check had been returned for insufficient funds. (R. 21, 29-30, 84). After receiving notification from the Clerk of the Court that she must "pay with another form," Dipoma waited another five months before acting. (R. 29-30). She ultimately paid the filing fee on August 11, 1998, nearly nine months after the statute of limitations had run on her cause of action. During this entire time, McPhie was provided no knowledge of Dipoma's claims. Even assuming that Dipoma "constructively filed" the complaint on November 24, 1997, as a matter of law she did not "act with dispatch" upon receiving actual knowledge that she would have to remit payment for the mandatory filing fee.

The Court of Appeals' decision argued that the requirement that a filing fee be paid before a complaint is considered "filed" "could potentially lead to a harsh, unintended result." Dipoma, 1 P.3d at 569; (R. 108). There can be no question that the very nature of rules in civil litigation such as filing deadlines, mandatory fees and statutes of limitations will sometimes result in seemingly harsh results. But the fact that results

occasionally seem harsh is no reason to label those same results as unintended. Numerous plaintiffs each year have otherwise completely valid claims dismissed because they failed to file a complaint within the time specified by the Utah Legislature. While such results are certainly harsh, especially to those plaintiffs, there can be no question that the results are intended. This court has recently noted that statute of limitations will occasionally result in harsh but necessary results, but that the legislative intent as to these statutes should be strictly followed. See Vigos v. Mountainland Builders, Inc., 993 P.2d 207, 219 (Utah 2000). Despite their potential harsh effects, rules, deadlines and limitations are necessary to the proper and timely function of the judicial system.

Utah courts have often recognized this principle. For example, in Fields v. Mountain States Telephone & Telegraph Co, 754 P.2d 677 (Utah Ct. App. 1988), the attorney for a plaintiff mailed a complaint and filing fee to the court five days before the statute of limitations ran. However, the court clerk never received the complaint or filing fee. A copy of the complaint and the filing fee were then delivered to the court several days after the statute of limitations period had run. The trial court dismissed the plaintiff's claims finding that they had not been filed before the statute of limitations. Affirming the trial court, the Court of Appeals stated that "[a] party who relies upon the mail does so at his or her own peril." Id. at 679.

Following the Court of Appeals' reasoning in Fields, it can be equally said that

a party who relies upon her own check does so at her own peril, especially where a complaint is filed only days before the statute of limitations runs. Such harsh results are a reality of our legal system that must establish and enforce deadlines in order to ensure a fair and reasonable judicial process. Courts that carve out judicial exceptions to rules and statutes run the risk of opening the floodgates to litigation surrounding innumerable other exceptions to the same rules.

CONCLUSION

For the reasons discussed above, Petitioner-Defendant McPhie respectfully requests that this Court affirm the order of the district court and hold that Dipoma failed to timely commence her cause of action against McPhie withing the applicable statute of limitations.

DATED this 14th day of September, 2000.

STRONG & HANNI

By _____
Paul M. Belnap
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of ~~September~~ October, 2000, a true and correct copy of the foregoing BRIEF OF PETITIONER was served by the method indicated below to the following:

Craig S. Cook	(✓)	U.S. Mail, Postage Prepaid
Attorney for the Plaintiff/Appellant	( )	Hand Delivered
3645 East Cascade Way	( )	Overnight Mail
Salt Lake City, Utah 84109	(✓)	Facsimile

4409.532

ADDENDUM

WEST'S UTAH RULES OF COURT
UTAH RULES OF CIVIL PROCEDURE
PART II. COMMENCEMENT OF ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS AND ORDERS

Current with amendments received through 11-1-1999

RULE 3. COMMENCEMENT OF ACTION

(a) How Commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof; provided, however, that the foregoing provision shall not change the requirement of Utah Code Ann. Section 12-1-8 (1986).

(b) Time of Jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

Advisory Committee Note

Rule 3 constitutes a significant change from the prior rule. The rule retains service of the ten-day summons as one of two means to commence an action, but the rule requires that the summons together with a copy of the complaint be served on the defendant pursuant to Rule 4. In so doing, the rule eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. The changes in Rule 3 must be read and should be interpreted in conjunction with coordinate changes in Rule 4 and with a change in Rule 12(a) that begins the running of the defendant's 20-day response time from the service of the summons and complaint.

Paragraph (a). This paragraph eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. Paragraph (b) of the former rule, which permitted the plaintiff to deposit copies of the complaint with the clerk for defendants not otherwise served with a copy at the time of the service of the summons, has also been eliminated. The rule requires, in effect, that both the summons and the complaint be served pursuant to Rule 4. Under a coordinate change in Rule 12(a), the defendant's time for answering or otherwise responding to the complaint does not begin to run until service of the summons and complaint pursuant to Rule 4.

Paragraph (b). This paragraph is substantially identical to paragraph (c) of the former rule.

TEXT

UTAH CODE, 1953
TITLE 21. FEES
CHAPTER 1. FEES OF CERTAIN STATE OFFICERS

21-1-1 Collection in advance by state officers.

For services performed in their respective offices, the officers named in thi chapter shall collect in advance for the use and benefit of the state the fees hereinafter enumerated and such other fees as may be provided by law.

CREDIT

History: R.S. 1898 & C.L. 1907, § 964; C.L. 1917, § 2510; L. 1921, ch. 52, § 1, R.S. 1933 & C. 1943, 28-1-1.

NOTES, REFERENCES, AND ANNOTATIONS

Cross-References. --Accounting for fees, § 21-6-1 et seq.
Liability on bond of officer failing to perform service after collecting fee, § 21-7-2.

NOTES TO DECISIONS

Notice of nonpayment.
Failure to file transcript within time provided was not excused by showing that clerk of lower court, after forwarding record to Supreme Court and receiving notification that filing fee had not been paid, failed to communicate fact to attorney for appellant, since record is not filed unless statutory fees are paid, and it was presumed that appellant and attorney knew law. Gee v. Smith, 52 Utah 602, 176 P. 620 (1918).

U.C.A. 1953 § 21-1-1
UT ST § 21-1-1
END OF DOCUMENT

UTAH CODE, 1953
TITLE 21. FEES
CHAPTER 1. FEES OF CERTAIN STATE OFFICERS

1-5 Civil fees of the courts of record --Courts complex design.

1) (a) The fee for filing any civil complaint or petition invoking the isdiction of a court of record not governed by another subsection is $120.
(b) The fee for filing a complaint or petition is:
(i) $37 if the claim for damages or amount in interpleader exclusive of rt costs, interest, and attorney fees is $2,000 or less;
(ii) $80 if the claim for damages or amount in interpleader exclusive of rt costs, interest, and attorney fees is greater than $2,000 and less than ,000;
(iii) $120 if the claim for damages or amount in interpleader is $10,000 or e; and
(iv) $80 if the petition is filed under Title 30, Chapter 3, Divorce, or le 30, Chapter 4, Separate Maintenance.
(c) The fee for filing a small claims affidavit is:
(i) $37 if the claim for damages or amount in interpleader exclusive of rt costs, interest, and attorney fees is $2,000 or less; and
(ii) $60 if the claim for damages or amount in interpleader exclusive of rt costs, interest, and attorney fees is greater than $2,000.
(d) The fee for filing a counter claim, cross claim, complaint in ervention, third party complaint, or other claim for relief against an sting or joined party other than the original complaint or petition is:
(i) $45 if the claim for relief exclusive of court costs, interest, and orney fees is $2,000 or less;
(ii) $60 if the claim for relief exclusive of court costs, interest, and orney fees is greater than $2,000 and less than $10,000;
(iii) $90 if the original petition is filed under Subsection (1)(a), the im for relief is $10,000 or more, or the party seeks relief other than etary damages; and
(iv) $60 if the original petition is filed under Title 30, Chapter 3, orce, or Title 30, Chapter 4, Separate Maintenance.
(e) The fee for filing a small claims counter affidavit is:
(i) $35 if the claim for relief exclusive of court costs, interest, and orney fees is $2,000 or less; and
(ii) $50 if the claim for relief exclusive of court costs, interest, and orney fees is greater than $2,000.
(f) The fee for depositing funds under Section 57-1-29 when not associated

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vith an action already before the court is determined under Subsection (1)(b)
)ased on the amount deposited.
(g) The fee for filing a petition is:
(i) $70 for trial de novo of an adjudication of the justice court or of the
;mall claims department; and
(ii) $40 for an appeal of a municipal administrative determination in
ıccordance with Section 10-3-703.7.
(h) The fee for filing a notice of appeal, petition for appeal of an
nterlocutory order, or petition for wrıt of certiorari is $190.
(i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee
or filing a petition for expungement is $50.
(ii) There is no fee for a petition filed under Subsection 77-18-10(2).
(j) (ı) Fifteen dollars of the fees established by Subsections (1)(a)
hrough (i) shall be allocated to the Judges' Retirement Trust Fund, as provide
n Title 49, Chapter 6, Judges' Retirement Act.
(ii) Two dollars of the fees established by Subsections (1)(a) through (i)
;hall be allocated by the state treasurer to be deposited in the restricted
ıccount, Children's Legal Defense Account, as provided in Section 63-63a-8.
(iıı) One dollar of the fees established under Subsections (1)(a) through
e), (1)(g), and (1)(r) shall be allocated to and deposited with the Dispute
:esolution Fund as provided in Section 78-31b-9.
(k) The fee for filing a judgment, order, or decree of a court of another
ıtate or of the United States is $25.
(l) The fee for filing probate or child custody documents from another stat
s $25.
(m) (i) The fee for filing an abstract or transcript of judgment, order, or
lecree of the Utah State Tax Commission is $30.
(ii) The fee for filing an abstract or transcript of judgment of a court of
aw of this state or a judgment, order, or decree of an administrative agency,
:ommission, board, council, or hearing officer of this state or of its politica
ıubdivisions other than the Utah State Tax Commission, is $40.
(n) The fee for filing a judgment by confession without action under
:ection 78-22-3 is $25.
(o) The fee for filing an award of arbitration for confirmation,
ıodification, or vacation under Title 78, Chapter 31a, Utah Arbitration Act,
hat is not part of an action before the court is $25.
(p) The fee for filing a petition or counter-petition to modify a decree of
livorce is $30.
(q) The fee for filing any accounting required by law is:
(i) $10 for an estate valued at $50,000 or less;
(ii) $20 for an estate valued at $75,000 or less but more than $50,000;
(iıı) $40 for an estate valued at $112,000 or less but more than $75,000;
(iv) $80 for an estate valued at $168,000 or less but more than $112,000;
nd
(v) $150 for an estate valued at more than $168,000.
(r) The fee for filing a demand for a civil jury is $50.
(s) The fee for filing a notice of deposition in this state concerning an
ction pending in another state under Utah Rule of Civil Procedure 26 is $25.

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(t) The fee for filing documents that require judicial approval but are not t of an action before the court is $25.
(u) The fee for a petition to open a sealed record is $25.
(v) The fee for a writ of replevin, attachment, execution, or garnishment is in addition to any fee for a complaint or petition.
(w) The fee for a petition for authorization for a minor to marry required Section 30-1-9 is $5.
(x) The fee for a certificate issued under Section 26-2-25 is $2.
(y) The fee for a certified copy of a document is $2 per document plus 50 ts per page.
(z) The fee for an exemplified copy of a document is $4 per document plus 50 ts per page.
(aa) The Judicial Council shall by rule establish a schedule of fees for ies of documents and forms and for the search and retrieval of records under le 63, Chapter 2, Government Records Access and Management Act. Fees under s subsection shall be credited to the court as a reimbursement of enditures.
(bb) There is no fee for services or the filing of documents not listed in s section or otherwise provided by law.
(cc) Except as provided in this section, all fees collected under this tion are paid to the General Fund. Except as provided in this section, all s shall be paid at the time the clerk accepts the pleading for filing or forms the requested service.
(dd) The filing fees under this section may not be charged to the state, its ncies, or political subdivisions filing or defending any action. In judgments rded in favor of the state, its agencies, or political subdivisions, except Office of Recovery Services, the court shall order the filing fees and lection costs to be paid by the judgment debtor. The sums collected under s subsection shall be applied to the fees after credit to the judgment, er, fine, tax, lien, or other penalty and costs permitted by law.
2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the rts shall transfer all revenues representing the difference between the fees effect after May 2, 1994, and the fees in effect before February 1, 1994, as icated credits to the Division of Facilities Construction and Management ital Projects Fund.
(ii) (A) Exceptas provided in Subsection (2)(a)(ii)(B), the Division of ilities Construction and Management shall use up to $3,750,000 of the revenue osited in the Capital Projects Fund under this Subsection (2)(a) to design take other actions necessary to initiate the development of a courts complex Salt Lake City.
(B) If the Legislature approves funding for construction of a courts plex in Salt Lake City in the 1995 Annual General Session, the Division of ilities Construction and Management shall use the revenue deposited in the ital Projects Fund under Subsection (2)(a)(ii) to construct a courts complex Salt Lake City.
(C) After the courts complex is completed and all bills connected with its struction have been paid, the Division of Facilities Construction and agement shall use any monies remaining in the Capital Projects Fund under

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Subsection (2)(a)(ii) to fund the Vernal District Court building.
(iii) The Division of Facilities Construction and Management may enter into agreements and make expenditures related to this project before the receipt of revenues provided for under this Subsection (2)(a)(iii).
(iv) The Division of Facilities Construction and Management shall:
(A) make those expenditures from unexpended and unencumbered building funds already appropriated to the Capital Projects Fund; and
(B) reimburse the Capital Projects Fund upon receipt of the revenues provided for under this Subsection (2).
(b) After June 30, 1998, the administrator of the courts shall ensure that all revenues representing the difference between the fees in effect after May 2, 1994, and the fees in effect before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted account.
(c) The Division of Finance shall deposit all revenues received from the court administrator into the restricted account created by this section.
(d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record to the Division of Facilities Construction and Management Capital Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.
(ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer $7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a court of record or an administrative traffic proceeding in accordance with Section 10-3-703.5 to the Division of Finance for deposit in the restricted account created by this section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance of the fine or bail forfeiture paid.
(3) (a) There is created within the General Fund a restricted account known as the State Courts Complex Account.
(b) The Legislature may appropriate monies from the restricted account to the administrator of the courts for the following purposes only:
(i) to repay costs associated with the construction of the court complex that were funded from sources other than revenues provided for under this Subsection (3)(b)(i); and
(ii) to cover operations and maintenance costs on the court complex.

CREDIT

History: C. 1953, 21-1-5, enacted by L. 1992, ch. 290, § 2; 1993, ch. 4, § 62; 1993, ch. 159, § 2; 1994, ch. 72, § 1; 1994, ch. 228, § 1; 1994, ch. 231, § 1; 1995, ch. 47, § 1; 1995, ch. 300, § 1; 1996, ch. 79, § 38; 1996, ch. 198, § 13; 1997, ch. 10, § 29; 1997, ch. 215, § 2; 1998, ch. 171, § 3; 1999, ch. 309, § 1; 2000, ch. 149, § 4; 2000, ch. 323, § 6.

NOTES, REFERENCES, AND ANNOTATIONS

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UTAH CODE, 1953
TITLE 21. FEES
CHAPTER 7. GENERAL PROVISIONS

7-2 Payment of fees prerequisite to service --Exception.

1) (a) The state and county officers mentioned in this title may not perform official service unless the fees prescribed for that service are paid in ance.

(b) When the fee is paid, the officer shall perform the services required.

(c) An officer is liable upon his official bond for every failure or refusal perform an official duty when the fees are tendered.

2) Except as provided for payment of filing fees of county and municipal rovement district filings in compliance with Sections 17A-3-207 and -3-307, no fees may be charged:

(a) to the officer's state, or any county or subdivision of the state;

(b) to any public officer acting for the state, county, or subdivision;

(c) in cases of habeas corpus;

(d) in criminal causes before final judgment;

(e) for administering and certifying the oath of office;

(f) for swearing pensioners and their witnesses; or

(g) for filing and recording bonds of public officers.

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tory: R.S. 1898 & C.L. 1907, § 1016; C.L. 1917, § 2576; R.S. 1933 & C. 1943, 7-2; L. 1991, ch. 181, § 3.

NOTES, REFERENCES, AND ANNOTATIONS

NOTES TO DECISIONS

ANALYSIS